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## THE AUTHORSHIP OF THE FEDERALIST

THE FEDERALIST is universally regarded as the most important contribution of our country to political science, and yet, although some twenty-five editions of it have been published, the authorship of twelve important numbers, about one-seventh of the whole, is still undetermined, and in the opinion of Mr. Lodge, the latest critical editor, must remain so. The authorship of three other numbers, 18, 19 and 20, earlier in dispute, Mr. Lodge believes to be satisfactorily settled. The remaining twelve numbers, 49-58, 62 and 63, are attributed to Hamilton in the so-called Hamilton lists, and to Madison in the Madison lists. Madison never wavered in the assertion that he was the author of them, and although the Madison lists differ from each other in regard to a few other numbers, they uniformly assign these numbers to Madison. Mr. Lodge, although the weight of testimony is, in his view, favorable to Hamilton, declares that he "is not even yet completely satisfied" that Nos. 49-58 are not from Madison's pen. In regard to Nos. 62 and 63 he has "very little doubt," thinking they both belong to Hamilton.<sup>1</sup> Mr. Lodge concludes: "No one is entitled to assign the disputed numbers to either Hamilton or Madison with absolute confidence. They were surely written by one or the other, and with that unsatisfactory certainty we must fain be content."

The case, in brief, is one where the external evidence is conflicting and where, hitherto, conclusions have been reached largely in accordance with the predilections of the respective admirers of the two claimants, by rejecting as less trustworthy the testimony of one or the other set of lists. For example, George Bancroft<sup>2</sup> is as sure that Madison wrote the numbers as John C. Hamilton<sup>3</sup> is that his father was the author.

In such a juncture the obvious step is to call in a new set of witnesses; in other words, to examine the papers themselves for internal evidence and not to acquiesce in a negative conclusion until every resource has been exhausted. It is hardly likely that two men of such different individualities as Hamilton and Madison, however sim-

<sup>1</sup> See Lodge's *The Federalist*, Introduction, for a presentation of the external evidence. All references are to Lodge's edition unless another is mentioned.

<sup>2</sup> *History of the Constitution of the United States*, II. 336.

<sup>3</sup> See his edition of *The Federalist*.

ilar their political experience, and however sincerely working together in the same cause, could write extensively in its behalf without their respective contributions bearing some mark of their authors. Fixed ideas, pet phrases, habitual modes of expression, characteristic political theories, will occur again and again, not only in the essays in question, but elsewhere in the works of the writers. The weight of such evidence is cumulative. Every additional example strengthens one side and proportionally weakens the other. Internal evidence is often inadequate to determine the author of an anonymous work when there are many possibilities. In the case before us all that is required of it is to turn the balance decidedly one way or the other between two even contestants, for such they seem to the student after Mr. Lodge's discussion.

In fact hardly as much as this is necessary, for the case was made to appear an even one by unfairly discrediting Madison's testimony as compared with that of Hamilton. Without such studied disparagement the external evidence is far stronger for Madison's authorship. Mr. Lodge's process is a curious one and starts with rejecting a specific statement of Madison's which can be substantiated beyond any doubt. In the Hamilton lists, he writes, there are "two errors as to two numbers, while in the Madison lists there are twelve errors as to six numbers. Tried, therefore, by the list of admitted errors, Hamilton's authority is shown to be six times as good as that of Madison." Passing by the crudeness of this method of expressing relative degrees of probability, it is to be noted that eight of these twelve "errors" in the Madison lists are made up as follows: Nos. 18 and 19 are three times, and No. 20 twice, attributed to Madison alone. These "errors" are in the earlier Madison lists. After the publication of the Hamilton lists which attributed Nos. 18, 19 and 20 to "Madison and Hamilton jointly," Madison explained the discrepancy in a note to No. 18 in Gideon's edition of 1818. "The subject of this," he writes, "and the following numbers happened to be taken up by both Mr. Hamilton and Mr. Madison. What had been prepared by Mr. Hamilton, who had entered more briefly into the subject, was left to Mr. Madison, on its appearing that the latter was engaged upon it, with larger materials, and with a view to a more precise delineation, and from the pen of the latter the several papers went to press."

In the fuller statement of Madison, in Bancroft's *History of the Constitution*, II. 337, he says: "It is possible, though not recollected, that something in the draught [*i. e.*, Hamilton's draught] may have been incorporated into the numbers as printed. But it was certainly not of a nature or amount to affect the impression left

on the mind of J. M., from whose pen the numbers went to the press, that the numbers were of the class written by him." Then follows a simple and natural explanation of how Hamilton might have regarded them as joint work. Mr. Lodge, however, without giving this explanation of the facts, says that Madison in Gideon's edition of 1818 "concedes 18, 19 and 20, to be the joint work of Hamilton and himself." With all respect to Mr. Lodge it may be asserted that he made no such concession. In the Gideon editions those numbers are ascribed to Madison alone, and the explanation quoted above is given in a foot-note. That explanation beyond doubt can be shown to be true to the letter, and in such a way as greatly to increase one's confidence in Madison's memory and his honesty. The "raw material" of those numbers, with the historical references exactly given, exists in Madison's papers in his own handwriting, and is printed in his *Writings*, Vol. I., pp. 293-314. Take Number 20 for example as a test case. Fully nine-tenths of it is drawn from Madison's own abstract of Sir William Temple's *Observations upon the United Provinces* and of Felice's *Code de l'Humanité*. This can be verified by any one in a few minutes by comparing No. 20 with pp. 302-309 of Madison's *Writings*, Vol. I. That Madison should assert Number 20 as his own was natural and right; that when Hamilton's assertion of joint authorship was made public he should explain the discrepancy by stating the facts was also natural; that his explanation was truthful internal evidence proves beyond a doubt and that he "conceded" Number 20 to be a joint work in any common acceptance of the term is without foundation. Sir William Temple's claim to be recognized as joint author of Number 20 is far stronger than Hamilton's. There are two paragraphs out of twenty-four in Number 20 which appear to have come from Hamilton. Most of the rest is from Sir William Temple. The case with Numbers 18 and 19 is similar, although neither is drawn from so few sources as Number 20; in each there is a possibility of a larger use of Hamilton's notes. After a comparison of these numbers with Madison's "Notes on Confederacies" no editor can have any excuse for assigning these numbers to "Hamilton and Madison," as has been uniformly done by Hamiltonian editors since 1810. It should at least read, "Madison and Hamilton," although there seems to be no good reason why the exact and truthful course of the Gideon editions should not be followed in the future.

It will hardly be denied that eight of the twelve "errors" of the Madison lists now disappear and we have then four errors in regard to two numbers in the Madison lists as compared with Hamilton's two errors in regard to two numbers.

When Mr. Lodge believed Hamilton's testimony six times as good as Madison's he regarded the question of the authorship of Nos. 49-58 as almost evenly balanced between the two. According to his own process of weighing evidence Hamilton's authority is shown at most to be only twice as good as Madison's, and perhaps only half as good.<sup>1</sup> If the scale was evenly balanced before, it must turn now, for the very case used by Mr. Lodge to show that Madison's testimony was less trustworthy than Hamilton's memorandum, when examined in the light of Madison's collected material, proves that Madison's statement was accurate to the letter and that Hamilton's rested on a natural misapprehension.

Let us turn now to the more difficult problem presented by Numbers 49-58, 62 and 63. In regard to the series 49-58 an ingenious attempt to reconcile Hamilton's list with Madison's was made in the suggestion that as Hamilton made a mistake of a single figure in attributing 54 to Jay instead of 64, it was not improbable that he made a similar mistake in the next line and wrote 37-48 instead of 37-58.<sup>2</sup> The value of this conjecture must depend upon the tendency of the internal evidence.

If one examines the structure of *The Federalist* there seems to be a somewhat systematic division of labor in the preparation of its parts. Jay's few contributions deal with foreign relations, with which he was especially conversant; three distinctively historical papers like 18, 19 and 20, come from Madison's hand because his studies in the history of federal government had supplied him with ampler materials. With these exceptions, all of the first part of *The Federalist*, issued originally as the first volume, deals with general questions emphasizing the defects of the Confederacy and the value of a more perfect union, and of these papers Hamilton wrote all but two. To him these were congenial topics and he could throw into their discussion his whole force without reserve. As the originator of the essays he could naturally choose for himself the particular part of the work he preferred to do, and request his collaborators to undertake the portions for which they were particularly fitted. It is not, then, without significance that in the opening paragraph of No. 37, the first of the connected Madison papers, it is said that the plan of the writers "cannot be complete without taking a more critical and thorough survey of the work of the Convention, etc." This is called "the remaining task." Madison was by far the most competent person to perform the "remaining task." He was present at

<sup>1</sup> Following Mr. Lodge's example we might count Hamilton's assertion of joint authorship of 18, 19 and 20 as "errors," and raise his number of "errors" to eight.

<sup>2</sup> See *The Historical Magazine*, VIII. 306.

every session of the Convention and did more than any one else to bring it to a successful issue. Hamilton, on the other hand, was absent from June 29 to August 13, and did not speak<sup>1</sup> from August 13 to September 6, on account of "his dislike of the scheme of government in general."<sup>2</sup> If Hamilton refrained from participating in the discussions of the Convention for this reason, is it not altogether probable that he proposed to leave to Madison, as far as practicable, the task of defending the details of the Constitution? This supposition is strengthened by the fact that Madison had evidently formed a plan of treatment for the numbers that he did not write.<sup>3</sup>

His work, however, was cut short by his having to leave New York early in March to prepare for the Virginia Convention. Numbers 49-58 appeared between February 5 and February 22, and are closely connected in subject matter with the preceding Madison numbers. Numbers 62 and 63 discuss the make-up of the Senate and logically attach themselves to Number 58, which concludes a similar treatment of the House of Representatives. They were published February 29 and March 7. They could have been written by Madison; that they should be was in accordance with the apparent plan of *The Federalist*. On the other hand, there seems to be no good reason why they should come from Hamilton as long as Madison was in New York. His approaching departure, toward the end of February, compelled Hamilton to take up the task if the series was to be continued, and he wrote Numbers 59-61, on the control of the Union over the federal elections, three numbers that could have come after 62 and 63 more logically than before them.

These considerations make it somewhat more probable that these numbers were written by Madison than by Hamilton, but the weight of the probability must be left to the judgment of the reader.

In examining the internal evidence limitations of space as well as lack of indications will prevent the treatment of the numbers with equal detail, but as they are attributed *en bloc* to either Madison or Hamilton by most of the lists, satisfactory proof that any two or three of them were written by one of the two will go far to turn the scale in his favor for the rest. I shall, therefore, present the evidence as fully as possible in regard to some numbers and only the most striking indications in regard to the rest.<sup>4</sup>

<sup>1</sup> He could not vote, as both Yates and Lansing of New York had left the Convention.

<sup>2</sup> Madison's *Debates*, Scott's ed., 671.

<sup>3</sup> After he left New York he wrote at least once to Hamilton in regard to the later course of the *Federalist*. April 3, Hamilton replies, explaining the line of argument which seemed best to him. Lodge's *Works of Hamilton*, VIII. 182.

<sup>4</sup> To reduce this article to the limits fixed by the editors the writer has been obliged

## NUMBER 49.

Number 49 continues the discussion on the separation of the powers begun in Number 48, and takes for special consideration a protective device proposed by Jefferson in his *Notes on Virginia*, providing for any two departments to unite in calling a convention in case the third should encroach on the Constitution.

This project of Jefferson's was known to Madison in August, 1785.<sup>1</sup> By May, 1786, he had in his possession a copy of the privately printed edition of Jefferson's *Notes*.<sup>2</sup> The first published edition of the *Notes* came out in London early in August, 1787,<sup>3</sup> and it was from this edition that Madison quoted in the preceding number of *The Federalist* (No. 48). The only place where any one could learn of this constitutional device of Jefferson's was in the appendix to some of the editions of his *Notes*. Madison had known of it for years and owned two of these editions of the *Notes*. A copy of Jefferson's *Notes* was among Hamilton's possessions, but it was the Philadelphia edition of 1788,<sup>4</sup> which was not published until January 23, 1788,<sup>5</sup> in Philadelphia, while Number 49 of *The Federalist* was printed in New York, February 5th.

If Hamilton wrote Nos. 49-58 the decision that Madison's contributions for the present should cease with No. 48 must have been reached at least some days earlier than February 5, because 49 and 50 are papers based on some research. It is, then, while not impossible, extremely unlikely that a book published in Philadelphia not earlier than January 23 should have reached New York and come into Hamilton's possession soon enough for him to select from it the text for the first of a new series of papers which appeared February 5. On the other hand, Madison having quoted extensively in No. 48 from the *Notes*, nothing would be more natural than for him to discuss Jefferson's project, thus freshly reminded of it. It may be added that Chancellor Kent notes that: "Mr. Hamilton told me that Mr. Madison wrote 48 and 49, or from pa. 101 to 112 of Vol. 2d."<sup>6</sup> The pages, as given, show that the numbers are those of the collected editions and not the original numbers as printed in the journals.

to omit about one-half of the material which he inserted in this portion of the paper. Some of the omissions will be indicated by references.

<sup>1</sup> *Writings of James Madison*, I. 183. To be cited as *Writings*.

<sup>2</sup> *Ibid.*, p. 234.

<sup>3</sup> Ford's *Jefferson's Works*, III. 79.

<sup>4</sup> J. C. Hamilton, *The Federalist*, p. cxi. The copy was in Mr. J. C. Hamilton's possession.

<sup>5</sup> It is first announced in the *Pennsylvania Packet* of January 25th, as "published this day." That it was not actually on the market for a few days is not unlikely, if we may judge from the practice of publishers to-day.

<sup>6</sup> Dawson's *The Federalist*, p. cxl.

NUMBER 50.

This number discusses the propriety of periodical instead of occasional appeals to the people, and reviews the history of the Pennsylvania Council of Censors, of 1783-84. In regard to this institution and Jefferson's scheme criticized in No. 49, John C. Hamilton writes: "As to this, as well as to the scheme of Jefferson, an analogy in Hamilton's writings—for the same reason, that no such project had come before him—was not to be expected."<sup>1</sup> The question naturally arises, then, "Why should Hamilton select this unfamiliar topic for a number of *The Federalist*?" To Madison, on the other hand, the project was familiar. The results of its work form the subject of the latter part of No. 48, and he had discussed this Council of Censors briefly as early as August, 1785, in his letter to John Brown, of Kentucky.<sup>2</sup>

NUMBER 51.

In No. 51 the writer continues the discussion of the preceding numbers as to the proper means "of maintaining in practice the necessary partition of power among the several departments." This line of thought was a favorite one with Madison.

*Number 51.*

"*Second.* It is of great importance in a republic not only to guard the society against the oppression of its rulers, but to guard one part of the society against the injustice of the other part. Different interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure." Cf. Madison's Notes on the Confederacy, *Writings*, I. 325-6. April, 1787.

"Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority,"<sup>3</sup> (pp. 325-6).

*Madison.*

(Objects of the Senate.)

"These were,—first, to protect the people against their rulers, secondly, to protect the people against the transient impressions into which they themselves might be led." *Debates*, 242. (June 26). . . "as different interests necessarily result from the liberty secured, the major interest might, under sudden impulses, be tempted to commit injustice on the minority." *Debates*, *ibid.* See also letter to Jefferson giving an account of the Convention, October 24, 1787. *Writings*, I. 353.

"The Society becomes broken into a greater variety of interests and pursuits of passions which check each other." *Writings*, I. 327, from Notes on the Confederacy. April, 1787.

"The only remedy is, to enlarge

<sup>1</sup> J. C. Hamilton's edition of *The Federalist*, p. cxiii.

<sup>2</sup> *Writings*, I. 183.

<sup>3</sup> Madison uses the phrase "interested combinations of the majority," in *Writings*, IV. 23 (1829), and the phrase "interested majority" in the *Federalist*, p. 59.



*Number 51.*

"In a free government the security for civil rights must be the same as that for religious rights. It consists in the one case in the multiplicity of interests, and in the other in the multiplicity of sects. The degree of security in both cases will depend on the number of interests and sects; and this may be presumed to depend on the extent of country and number of people comprehended under the same government,"<sup>1</sup> (p. 326).

"This view of the subject shows that in the exact proportion as the territory of the Union may be formed into more circumscribed Confederacies, or States, oppressive combinations of a majority will be facilitated."

"In the extended republic of the United States, and among the great variety of interests, parties and sects which it embraces, a coalition of a majority of the whole society could seldom take place on any other principles than those of justice and the general good."

*Madison.*

the sphere, and thereby divide the community into so great a number of interests and parties, that in the first place a majority will not be likely at the same moment, to have a common interest separate from the whole." *Debates*, 119, June 6th, 1787. "In a large society, the people are broken into so many interests and parties that a common sentiment is less likely to be felt and the requisite concert less likely to be formed by a majority of the whole." Letter to Jefferson, Oct. 24, 1787, *Writings*, I. 352.

"The same security seems requisite for the civil as for the religious rights of individuals. If the same sect form a majority, and have the power, other sects will be sure to be depressed. Divide et impera—is, under certain qualifications, the only policy by which a republic can be administered on just principle." Letter to Jefferson, *Writings*, I. 352-3, Oct. 24, 1787.

"It may be inferred that the inconveniences of popular states, contrary to the prevailing Theory, are in proportion not to the extent, but to the narrowness of their limits." Notes on the Confederacy, *Writings*, I. 327, April, 1787. "As in too small a sphere oppressive combinations may be too easily formed against the weaker party, so," etc. Letter to Jefferson, October 24, 1787. "In the extended republic of the United States," . . . . . "greater variety of interests and pursuits of passions," for the rest see above, p. 449. "The only remedy is to enlarge the sphere, and thereby divide the community into so great a number of interests and parties, that, in the first place, a majority will not

<sup>1</sup> Cf. also Madison's remarks in the Virginia Convention. "But the United States abound in such a variety of sects that it is a strong security against religious persecution." Elliot's *Debates*, III. 330.

Number 51.

"It is no less certain than it is important, notwithstanding the contrary opinions which have been entertained, that the larger the society, provided it lie within a practical sphere, the more duly capable it will be of self-government."<sup>1</sup>

Madison.

be likely, at the same moment to have a common interest separate from that of the whole or of the minority." *Debates*, p. 119, (June 6th).

"It was incumbent upon us, then, to try this remedy, and with that view, to frame a republican system on such a scale, and in such a form as will control all the evils which have been experienced." *Debates*, p. 119.

The five numbers 47-51 form a continuous discussion, complete in itself, of the true meaning of the maxim of the separation of the powers, its applicability to the United States, etc. Madison's right to be regarded as the author of the first two has never been disputed. The evidence that he also wrote Number 51 has been laid before the reader. It seems to me to establish the proof of his authorship as certainly as an undisputed assertion could. The evidence in the case of Numbers 49 and 50 is confirmatory. The significance of this evidence can be fairly weighed only by a comparison of it with that which has been put forward in behalf of Hamilton in J. C. Hamilton's edition of *The Federalist*, pp. cx.-cxv,<sup>2</sup> and for Number 51 on p. cxiv.

The next group of essays, Numbers 52-58, take up in detail the structure of the House of Representatives as framed by the Constitution. The internal evidence in regard to the authorship of these numbers, so far as I have been able to detect it, is much less in amount. Some of it, however, is striking.

Number 52.

"The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress would have been improper for the reason just mentioned," (pp. 327-28).

Madison.

"The right of suffrage is certainly one of the fundamental articles of republican government, and ought not to be left to be regulated by the Legislature." *Debates*, p. 470, August 7 (Hamilton was absent at that time).

<sup>1</sup> Cf. Madison in *Federalist*, No. 10, p. 60.

<sup>2</sup> It is but fair to J. C. Hamilton to remember that when he made his argument in favor of Hamilton's authorship Madison's *Writings* had not been published. He had examined some of them in MS., but not thoroughly enough.

## NUMBER 53.

Subject: Frequency of Elections.

*Number 53.*

In support of biennial elections it is urged that time will be necessary for the legislator to gain "a certain degree of knowledge of the subjects on which he is to legislate," (p. 335).

"Some knowledge of the affairs, and even of the laws of all the States, ought to be possessed by the members from each of the States," (p. 336).

"The distance which many of the representatives will be obliged to travel, and the arrangements rendered necessary by that circumstance, might be much more serious objections with fit men to this service if limited to a single year than if extended to two years," (p. 338).

*Madison.*

"Three years will be necessary, in a government so extensive, for members to form any knowledge of the various interests of the States to which they do not belong, and of which they can know but little, from the situation and affairs of their own; one year will be almost consumed in preparing for and traveling to and from the seat of national business." *Debates*, June 12, p. 151.

Madison argued that annual elections would be extremely inconvenient for the representatives. "They would have to travel seven or eight hundred miles from the distant parts of the Union." *Debates*, June 21, p. 216.

The amount of evidence in regard to No. 53 is not great, but this is to be noted in regard to its character. Two of the most important arguments in No. 53 for biennial rather than annual elections are arguments advanced by Madison in the Convention in favor of triennial elections. Hamilton participated in the discussion, June 21 (p. 217). Like Madison, he favored triennial elections. Of the five points that he made in his speech, not one is mentioned in No. 53. If Hamilton wrote No. 53 he did not repeat a single one of five arguments which seemed good to him six months before, but devoted himself to an elaboration of the points made by Madison. It may be remarked in addition that one of the so-called Hamilton lists, that of Chancellor Kent, attributes No. 53 to Madison.

## NUMBER 54.

As an additional bit of external evidence, not recorded by previous writers, it may be remarked that Madison in a letter, in 1819, casually referred to No. 54 as expressing his views, thus implying that he wrote it;<sup>1</sup> and that in the Virginia constitutional convention of 1829 he publicly asserted his authorship of the number.<sup>2</sup>

Finally, it may be remarked that Hamilton in the Benson list and in the list copied at his own request by J. C. Hamilton did not

<sup>1</sup> Letter to Robert Walsh, Nov. 27, 1819. *Writings*, IV. 154.

<sup>2</sup> *Debates of the Virginia State Convention*, 1829-30, p. 188.

claim Number 54 for himself, but assigned it to Jay.<sup>1</sup> It may be said, of course, that he intended in that list to write 64, but as a matter of fact he did not assign 54 to himself, and whether he intended to write 64 is open to most serious doubt. In the last number of the Camillus papers, 1794,<sup>2</sup> he quotes from numbers 42 and 64 of *The Federalist* and appends this note: "It is generally understood that two persons were concerned in the writing of these papers, who, from having been members of the Convention, had a good opportunity of knowing its views—and were under no temptation at that time in this particular to misrepresent them." If Hamilton in 1794 remembered that Jay<sup>3</sup> wrote number 64, this note was highly disingenuous; but there is no reason to suspect Hamilton of such disingenuousness. Therefore in 1794 Hamilton attributed 64 either to himself or to Madison. That he attributed it to himself is made practically certain by his not attributing it to Madison in the Benson list. It seems fair to conclude, therefore, that in attributing 54 to Jay in that list and the list copied by J. C. Hamilton, Hamilton did not make a mere clerical error, but consciously disclaimed writing 54.

#### NUMBER 56.

To meet the objection that the representatives would not have adequate knowledge, the writer of 56 says :

##### *Number 56.*

"Divide the largest state into ten or twelve districts, and it will be found that there will be no peculiar interests in either, which will not be within the knowledge of the representative of the district," (pp. 351-2).

##### *Madison.*

In the Virginia Convention, Madison said: "Could not ten intelligent men chosen from ten districts from this State lay direct taxes on a few objects in the most judicious manner? Can any one divide this state into ten districts so as not to contain men of sufficient information?" Elliot, III. 253-4.

Hamilton in the New York Convention said: "The natural and proper method of holding elections will be to divide the State into districts in proportion to the number to be elected. This State will consequently be divided at first into six. One man from each district will probably possess all the knowledge the gentlemen can desire." (Elliot, I. 434.)

It will be remembered that the Constitution assigned, in the beginning, ten representatives to Virginia and six to New York. Hamilton in the New York Convention illustrates the adequacy of

<sup>1</sup> J. C. Hamilton's edition, p. xcvi.

<sup>2</sup> *Works*, V. 320-321.

<sup>3</sup> Jay was not a member of the Convention.

the representation by supposing the division of the state into six districts, and Madison does the same in the Virginia Convention by supposing Virginia to be divided into ten districts. The writer of Number 56, in addressing the people of New York, supposes the largest state divided into ten districts, etc. If Hamilton wrote 56, why should he take Virginia as an example in February and New York in July? He might do so, of course, but there is a certain naturalness in a Virginian taking the largest state—his own state—as the extreme example, even though addressing New Yorkers, while the most natural example for a New Yorker, as well as the most directly pertinent, would be New York.

Mr. Lodge in his discussion attaches great weight to the fact that in the edition of 1802, prepared under Hamilton's supervision, the eighth paragraph of this number was omitted and a new one substituted for it. But granting all his deductions and accepting the authenticity of the Benson list of 1804, all that the insertion of this new paragraph proves is that Hamilton believed Number 56 to be his in 1802, as well as in 1804. The weight of this confirmatory testimony seems to be slight, except so far as it helps to establish the authenticity of the Benson list.

The closing paragraph of Number 56 cites the experience of Great Britain, "which presents to mankind so many political lessons, both of the monitory and exemplary kind" (p. 354). "Monitory" is almost a favorite word with Madison. I have noted the following instances: "Monitory examples," III. 244; "monitory reflection," IV. 334; "Instructed by these monitory lessons," IV. 424; and, in *The Federalist*, No. 20, p. 118, "this melancholy and monitory lesson of history." In referring to the experience of Great Britain the writer cites Burgh's *Political Disquisitions*. Madison was reading Burgh just about this time, for in his "Additional Memorandum for the Convention of Virginia in 1788, on the Federal Constitution," he quotes Burgh on the union between England and Scotland. (*Writings*, I. 392, note b.) I have met with no reference to Burgh in Hamilton's writings.

Number 62 continues directly the discussion in 58 on the character and utility of the two Houses of Congress.

*Number 62.*

" . . . it will be proper to inquire into the purposes which are to be answered by a Senate," (p. 387).

"It is a misfortune incident to republican government, though in a less degree than to other governments, that those who admin-

*Madison.*

" . . . it will be proper to take a view of the ends to be served by it," [*i. e.*, a Senate]. *Debates*, 241.

"A people deliberating . . . on the plan of government most likely to secure their happiness, would first be aware, that those charged

Number 62.

ister it may forget their obligations to their constituents, and prove unfaithful to their important trust," (p. 387).

"In this point of view, a senate as a second branch of the legislative assembly, distinct from and dividing the power with a first, must be in all cases a salutary check on the government," (ibid).

"The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions," (pp. 387-8).

"... a body which is to correct this infirmity ought itself to be free from it, and consequently ought to be less numerous," (p. 388).

"It ought, moreover, to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration," (p. 388).

"Another defect to be supplied by a senate lies in a want of due acquaintance with the objects and principles of legislation. It is not possible that an assembly of men called for the most part from pursuits of a private nature, continued in appointment for a short time and led by no permanent motive to devote the intervals of public occupation to a study of the laws, the affairs, and the comprehensive interests of their country, should, if wholly left to themselves, escape a variety of important errors in the exercise of their legislative trust," (p. 388).

"What indeed are all the repealing, explaining, and amending laws which fill and disgrace our voluminous codes, but so many monuments

Madison.

with the public happiness might betray their trust." *Debates*, 242.

"An obvious precaution against this danger would be to divide the trust between different bodies of men, who might watch and check each other." *Debates*, ibid.

"Another reflection . . . would be that they themselves, as well as a numerous body of representatives, were liable to err also from fickleness and passion." *Debates*, ibid.

"The use of the Senate is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch. Enlarge their number, and you communicate to them the vices which they are meant to correct." *Debates*, 126.

"A necessary fence against this danger would be to select a portion of enlightened citizens whose limited number and firmness may seasonably interpose against impetuous councils." *Debates*, 242.

"The members (of the Senate) ought therefore to derive a firmness from the tenure of their places." Remarks on Jefferson's Draught of a Constitution for Virginia, *Writings*, I. 185.

"It would next occur to such a people, that they themselves were liable to temporary errors, through want of information as to their true interest; and that men chosen for a short time, and employed but a small portion of that in public affairs, might err from the same cause." *Debates*, 242.

"It [the Senate] ought to supply the defect of knowledge and experience incident to the other branch; there ought to be time given, therefore, for attaining the qualifications necessary for that purpose." Remarks on Jefferson's Draught, *Writings*, I. 185.

"Try the codes of the several states by this test, and what a luxuriance of legislation do they present. . . . A review of the several

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of deficient wisdom; . . . so many admonitions to the people, of the value of those aids which may be expected from a well-constituted Senate," (p. 388).

"A good government implies two things: first, fidelity to the object of government, which is the happiness of the people; secondly, a knowledge of the means by which that object can be best attained. Some governments are deficient in both these qualities; most governments are deficient in the first. I scruple not to assert, that in American governments too little attention has been paid to the last," (p. 389).

"From this change of men must proceed a change of opinions; and from a change of opinions a change of measures," (p. 389).

"The internal effects of a mutable policy are still more calamitous. It poisons<sup>1</sup> the blessings of liberty itself. It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood; if they be repealed or revised before they are promulgated, or undergo such incessant changes that no man, who knows what the law is to-day, can guess what it will be to-morrow," (p. 340).

"Another effect of public instability is the unreasonable advantage it gives to the sagacious, the enterprising, and the moneyed few over the industrious and uninformed mass of people. Every new regulation concerning commerce or

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codes will show that every necessary and useful part of the least voluminous of them might be compressed into one-tenth of the compass and at the same time be ten-fold as perspicuous." Notes on the Confederacy, April 1787, *Writings*, I. 324.

"The want of fidelity in the administration of powers having been the grievance felt under most governments, and by the American States themselves under the British government, it was natural for them to give too exclusive an attention to this primary attribute." Letter to John Brown, August 1785, *Writings*, I. 177.

"A frequent change of men will result from a frequent return of elections; and a frequent change of measures from a frequent change of men." Number 37 of *The Federalist*, p. 218.

Cf. p. 455 *ad fin.*, also what follows it on "mutability of laws." "This evil is intimately connected with the former, yet deserves a distinct notice, as it emphatically denotes a vicious legislation. We daily see laws repealed or superseded before any trial can have been made of their merits, and even before a knowledge of them can have reached the remoter districts within which they were to operate." Notes on the Confederacy, April, 1787, *Writings*, I. 324.

"In the regulations of trade, this instability becomes a snare not only to our own citizens, but to foreigners also," *ibid.*

"The sober people of America . . . have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and

<sup>1</sup> A favorite metaphor with Madison. Cf. *The Federalist*, p. 81, and p. 286; also *Writings*, II. 126 and 600; III. 360 and IV. 206.

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revenue, or in any manner affecting the value of the different species of property presents a new harvest to those who watch the change, and can trace its consequences."

"But the most deplorable effect of all is that diminution of attachment and reverence which steals into the hearts of the people, towards a political system which betrays so many marks of infirmity and disappoints so many of their flattering hopes,"<sup>1</sup> (p. 391).

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snares to the more industrious and less informed part of the community." *The Federalist*, No. 44, p. 278.

"By correcting the infirmities of popular government, it will prevent that disgust against that form which may otherwise produce a sudden transition to some very different one. . . . The real danger to republican liberty has lurked in that cause." Remarks on Jefferson's Draught, *Writings*, I. 185-6.

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Number 63.

The first topic is the need of a due sense of national character.

"Yet however requisite a sense of national character may be, it is evident that it can never be sufficiently possessed by a numerous and changeable body. It can only be found in a number so small that a sensible degree of the praise and blame of public measures may be the portion of each individual;<sup>2</sup> or in an assembly so durably invested with public trust, that the pride and consequence of its members may be sensibly incorporated with the reputation and prosperity of the community. The half-yearly representatives of Rhode Island would probably have been little affected in their deliberations on the iniquitous measures of that State, by arguments drawn from the light in which such measures would be viewed by foreign nations or even by the sister states," (p. 392).

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Motives restraining a majority from injustice.

"Secondly. Respect for character. However strong this motive may be in individuals, it is considered as very insufficient to restrain them from injustice. In a multitude its efficacy is diminished in proportion to the number which is to share the praise and the blame.<sup>2</sup> Besides, as it has reference to public opinion, which, within a particular society, is the opinion of the majority, the standard is fixed by those whose conduct is to be measured by it. The public opinion without the society will be little respected by the people at large of any country. Individuals of extended views and of national pride may bring the public proceedings to this standard, but the example will never be followed by the multitude. Is it to be imagined that an ordinary citizen or even Assembly man of Rhode Island in estimating the policy of paper ever considered or cared, in what light the measure would be viewed in France or Holland, or

<sup>1</sup> Cf. Letter to Edmund Pendleton, February 24, 1787, *Writings*, I. 230; of. also pp. 325, 333, 350 and 445, and *The Federalist*, p. 56, for similar expressions of the same idea.

<sup>2</sup> "Respect for character is always diminished in proportion to the number among whom the blame or praise is to be divided." Madison, *Debates*, 118.



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"... such an institution may be sometimes necessary as a defence to the people against their own temporary errors and delusions," (p. 393).

"It may be suggested that a people spread over an extensive region cannot, like the crowded inhabitants of a small district, be subject to the infection of violent passions, or to the danger of combining in pursuit of unjust measures," (p. 394). The writer makes a cross reference to No. 10 [by Madison] for an elaboration of this theory.

The Senates of Sparta, Rome and Carthage.

"In each of the two first there was a senate for life," (p. 394).

## Carthage.

"... a smaller council, drawn out of the senate," (p. 395).

"Lastly in Sparta we meet with the Ephori, and in Rome with the Tribunes, two bodies, small indeed in numbers, but annually elected by the whole body of the people," (p. 396).

"... liberty may be endangered by the abuses of liberty, as well as by the abuses of power: . . . and that the former, rather than the latter, are apparently most to be apprehended by the United States," (p. 397).

"In Sparta, the Ephori, the annual representatives of the people, were found an over match for the senate for life, continually gained on its authority and finally

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even in Massachusetts or Connecticut?" Notes on the Confederacy, April 1787, *Writings*, I. 326.

"It would next occur to such a people, that they themselves were liable to temporary errors." *Debates*, 242.

"It may be inferred that the inconveniences of popular states, contrary to the prevailing theory, are in proportion, not to the extent, but to the narrowness of their limits." Notes on the Confederacy, *Writings*, I. 327. Cf. also *The Federalist*, No. 10, p. 58.

## "Sparta

2 Kings,  
28 senators,  
Senate. 1. For life."

Additional Memorandum for the Convention of Virginia in 1788 on the Federal Constitution. *Writings*, I. 394.

## Carthage.

"Senate . . . must have been great since the 100 drawn out of it," *ibid.*, p. 395.

## Sparta.

"Ephori, chosen annually by the people," etc. Additional Memorandum, etc., I. 394.

"It is of infinite importance to the cause of liberty to ascertain the degree of it which will consist with the purposes of the society. An error on one side may be as fatal as on the other. Hitherto, the error in the United States has lain in the excess." Letter to Mazzei, Dec. 10, 1788, *Writings*, I. 445.

"Ephori, chosen annually by the people and concurred in their behalf with kings and Senate, over both of whom they had authority. They . . . in fine, directed every-

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drew all power into their own hands," (p. 399).

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thing." Additional Mem., *Writings*, I. 394.

"To these examples might be added that of Carthage, whose Senate, according to the testimony of Polybius,<sup>1</sup> instead of drawing all power into its vortex,<sup>2</sup> had at the commencement of the second Punic War lost almost the whole of its original portion," (p. 399).

Carthage.

"Whilst Senate retained its authority, says Polybius,<sup>1</sup> wisdom and success marked everything. People at first gave way to Senate; at length, intoxicated by wealth and conquests, they assumed all power." Additional Mem., 1788, *Writings*, I. 399.

The evidence in favor of Madison's authorship of Nos. 62 and 63 is, it seems to me, absolutely decisive. Jay's authorship of No. 64 was finally established by finding a draft of the essay in his papers. It will hardly be denied that a considerable part of Nos. 62 and 63 has been found in Madison's writings. The evidence in regard to Nos. 51 and 53 is also convincing; and that in the case of Nos. 49 and 50 is confirmatory. The value of the evidence can be best appreciated by comparing it with that advanced in Hamilton's favor by his son.<sup>3</sup> It will also be remembered, in view of the direct conflict of testimony between Hamilton and Madison, that it is a question of memory and not of veracity. If the conjecture referred to on p. 446 be regarded with favor; that is, that Hamilton in haste and agitation wrote "37 to 48 inclusive by M." instead of "37 to 58," then his error in regard to Nos. 62 and 63 could easily be accounted for. He would in any case recollect the salient fact that he again took up the writing of the essays because Madison had to go to Virginia. Madison left New York March 4th. Nos. 59, 60 and 61, by Hamilton, were published February 22d and 26th. Hamilton might easily forget that Madison contributed two papers after he himself had begun to write again, just as he unquestionably did forget that Jay contributed No. 64 at that same time. That Hamilton's memory was at fault where his list differed from Madison's seems to have been the final conclusion of an exceptionally competent and friendly critic. Chancellor Kent, of New York, who was not only a friend of Hamilton's, but had listened to him in the New York Convention, and many times later in court, received from him once in Albany the assurance that the designation of the authorship

<sup>1</sup> I have not noticed any reference to Polybius in Hamilton. Besides the passage above, Madison quotes Polybius in *Writings*, I. 298, 347.

<sup>2</sup> A favorite metaphor with Madison. I have not noticed it in Hamilton's writings. For other examples in Madison's works, see *Federalist*, p. 309; *Debates*, pp. 372 and 399, and *Writings*, II. 465, and III. 246.

<sup>3</sup> See J. C. Hamilton's edition of *The Federalist*, pp. cx.-cxxxii.

of *The Federalist* in his possession was correct. Later, Chancellor Kent pasted a copy of the *Washington Gazette* list in his copy of *The Federalist* on a fly-leaf opposite the Hamilton list, and added: "Mem<sup>r</sup>. I have no doubt Mr. Jay wrote No. 64, on the Treaty Power. He made a speech on that subject in the N. Y. Convention, and I am told he says he wrote it. I suspect, therefore, from internal Ev[idence] the above to be the correct List, and not the one on the opposite Page."<sup>1</sup> The *Washington Gasette* list coincides with Madison's own list except in regard to Nos. 17, 20 and 21. It is clear then that Chancellor Kent in spite of Hamilton's assurance in regard to Nos. 50, 51, 52, 54-58, 62 and 63,<sup>2</sup> was led by the weight of internal evidence to suspect that the Madison lists assigned the authorship correctly. This change took place before the publication of Madison's *Writings* and perhaps before the publication of the *Journal* or the *Debates*. Such a change by one who was a friend of Hamilton and a careful student of *The Federalist* as well as a great lawyer is significant.

EDWARD GAYLORD BOURNE.

<sup>1</sup> Dawson's *The Federalist*, pp. cxl.-cxli.; J. C. Hamilton's edition, p. cxii., note.

<sup>2</sup> His Hamilton list assigned 49 and 53 to Madison.